

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3822 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

JUSAB @ KHAJURIO GULMMAD CHAVDA

Versus

STATE OF GUJARAT

Appearance:

Ms. Jayshree Bhatt, Advocate
for MRS MADHUBEN SHARMA for Petitioner
Mr. D.P. Joshi, A.P.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 02/11/1999

ORAL JUDGEMENT

Heard learned Advocate Ms. Jayshree Bhatt for
Ms. Madhuben Sharma for the petitioner and learned
A.P.P. Mr. D.P. Joshi for the respondents.

The detention order dated 6-1-1999 passed by the
respondent no.1- District Magistrate, Jamnagar against

the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present petition under Article 226 of the Constitution.

2. The grounds of detention served to the petitioner under Section 9(1) of "PASA", copy of which is produced at Annexure "B" inter alia indicate that about 12 criminal cases have been registered against the petitioner at Jamnagar C.T.B. Police Station in respect to offences made punishable under the Bombay Prohibition Act. That the said offences are ranging from 7-2-1998 to 6-1-1990 and in each of the cases countrymade liquor has been seized from the possession of the petitioner. The grounds further indicate that five witnesses on assurance of anonymity have furnished information regarding the bootlegging activity of the petitioner vide their statements dated 18-12-1998, 19-12-1998 and 20-12-1998.

3. That in consideration of the said material, the respondent no.2 has come to the conclusion that the petitioner is a "bootlegger" within the meaning of Section 2(b) of PASA. That resort to general provisions of law being insufficient to prevent the petitioner from continuing his nefarious criminal activity which adversely affects the maintenance of public order, the detention order is necessary, and hence, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the bar on behalf of the petitioner that the detaining authority while passing the impugned order has failed to consider the less drastic remedy of opposing and cancellation of bail which discloses the non application of mind of the detaining authority and as such the subjective satisfaction having been vitiated the order is invalid.

5. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT & ORS. 1995(2) G.L.R. 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the Cr.P.C. claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram: C.K.Thakkar & A.L.Dave,JJ.).

7. In the instant case, on typed page 8 of the

grounds of detention, the detaining authority has observed that despite taking a bond from the petitioner under Sec.93 of the Bombay Prohibition Act, the petitioner has continued his bootlegging activity and as the petitioner is released on bail in each of the cases registered against him under the Prohibition Act, in order to prevent the petitioner forthwith from continuing his criminal activity, it is necessary to pass the detention order. That the said observation does not disclose consideration by the said authority of less drastic remedy of claiming cancellation of bail. Not only that there is nothing in order as to why the detaining authority has not considered this aspect of less drastic remedy.

8. Under the circumstances, I am constrained to hold that on account of non consideration of less drastic remedy of cancellation of bail under Section 437(5) of the Criminal Procedure Code, the subjective satisfaction arrived at by the detaining authority stands vitiated thus rendering the impugned order invalid.

9. As the petition succeeds on the above stated ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

9. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 6-1-1999 passed by the respondent no.2-District Magistrate, Jamnagar against the petitioner is hereby quashed and set aside. The petitioner-detenu-Jusab alias Khajurio Gulmammad Chavda is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

stanley-akt.